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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.
No. 344.

ARTHUR L. BELL *et al.*,

Petitioners,

vs.

R. B. HOOD *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITIONERS' REPLY BRIEF.

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I. Petitioners' Reply to Respondents' Statement.

1. The respondents' statement is posited largely, not on the allegations contained in the petitioners' complaint which, the trial court ruled, failed to disclose jurisdiction [R. 151], but on affidavits and counter-affidavits submitted to the trial court in connection with a motion for summary judgment made by the respondents [R. 42]. These affidavits, and the portions of the respondents' statement relying upon the affidavits, should be ignored by this Court for the following reasons:

(a) Neither the District Court [R. 151] nor the Circuit Court below [R. II, 168] based their ruling upon the

affidavits. Their decisions were arrived at solely upon a consideration of the recitals contained in the complaint, which complaint the courts below respectively ruled did not state a cause of action conferring jurisdiction upon the trial court. No reference is made by either court below to the affidavits as the basis for their decisions. Cf. Opinion of District Court [R. 145]; Opinion of Circuit Court [R. II, 168].

(b) The evidence submitted by the respondents, in support of their motion for summary judgment, constituted *defensive* material, which, under the respondents' own theory, may not be considered in determining the jurisdiction of the District Court.

Accordingly, this Court should ignore all portions of the respondents' statement relying upon factual material appearing in the Record, other than those set forth in the petitioners' complaint.[1] Accordingly, if this Court limits itself to an appraisal of the import of the recitals in the petitioners' complaint, it will readily find itself in accord with the observation of the Circuit Court below that "There can be no question but that the complaint states strong cases, and if the allegations have any foundation in truth, *the plaintiffs' legal rights have been ruthlessly violated.*" [R. II, 173.] (Italics ours.)

2. The references in the respondents' "statement" to the ruling of the trial court in the case of *Bell v. United States*, now pending on appeal in the Ninth Circuit Court

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[1]The petitioners' complaint appears in the Record at pp. 2-30; all page references in the Respondents' Brief from pp. 34-134 are references to affidavits and counter-affidavits; these should not be considered by this Court.

of Appeals (*Bell v. United States*, No. 10432) on the occasion of the trial of the petitioners on criminal charges, are similarly out of place in the instant proceedings. The trial court below rejected the respondents' contention that the ruling of the trial judge in the criminal case was *res judicata* in the instant case [R. 157]. From this ruling the respondents have neither taken nor prosecuted any appeal.[2]

The petitioners charged with "sedition," claim to be the victims of a political persecution. The constitutional guarantee against unlawful searches and seizures demands the more scrupulous protection at the hands of the courts where, as claimed by the petitioners, such searches are "used by a government determined to suppress political opposition under the guise of sedition." (Judge Hand in *U. S. v. Kirschenblatt* (C. C. A. 2), 16 Fed. (2d) 202, 203.)[3]

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[2]The reason for the respondents' venturing into fields *de hors* the Record in this case is not clear—at least not patent.

Nor does the relevancy of the respondents' reference to the petitioners' conviction upon charges of conspiracy to commit "sedition" appear, for this Court has ruled often enough that the constitutional guarantee against unreasonable searches and seizures protect the guilty as well as the innocent.

> "The Fourth Amendment forbids every search that is unreasonable and is construed liberally to safeguard the right of privacy. . . . Its protection extends to offenders as to the law abiding," *U. S. v. Lefkowitz*, 285 U. S. 452, 464.

[3]Cf. in accord Zechariah Chafee, Jr. in "Freedom of Speech in the United States," at p. 242, dealing with the experiences of John Wilkes.

II. Reply to Respondents' Argument.

1. The right of the petitioners to sue is *not* derived from local or common law, exclusively, as suggested by the respondents. By virtue of the express guarantees of the Fourth Amendment, the right to be free from unreasonable searches and seizures, formerly a general right arising out of general or common law, became a specific federal constitutional right expressly protected by the federal Constitution. It is for the vindication of that expressly vouchsafed federal constitutional right, that the petitioners filed their complaint in the federal District Court below. That the common law buttresses their rights, does not undermine its federal constitutional support.

2. So far as jurisdiction of a United States District Court is concerned, there can be no valid distinction, as asserted by the respondents, between a suit for an injunction and a suit for damages against federal officers, where the issue is whether the officers have acted in excess of their power. If the citizen, deprived of federal constitutional right by threats of actions by federal officers in excess of their authority deem injunctive relief adequate, the equity side of the federal court, it is conceded by the respondents, is open to him. (Cf. *Philadelphia Co. v. Stimpson*, 223 U. S. 605.) If the illegal action by federal officers has been consummated, why should there not be jurisdiction in the federal court to award damages to the aggrieved citizen, in a case where damages are otherwise appropriate.[4]

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[4]Cf. our discussion of this point in our Petition, p. 9, Note 7.

We see no basis for the respondents' *ipse dixit* assertion that a suit for damages is "one for substituted or secondary redress" (and we don't understand what that means!).

More often than not, the only adequate recourse for the vindication of abridged constitutional rights is by way of a suit for damages.

3. In *Tunstall v. Brotherhood*, 323 U. S. 721, the latest decision by this Court upon the general subject in issues herein (and heavily relied upon in our Petition) the respondents make only the following casual mention:

> "*Tunstall v. Brotherhood*, 323 U. S. 721, arose under a law regulating commerce, the Railway Labor Act, which created rights in favor of the class of which the plaintiff was a member."

To phrase the respondents' treatment of the *Tunstall* case, we say that the instant complaint was filed to secure redress, by way of damages, for the abridgment of the Fourth Amendment "which created rights in favor of" all classes of persons in the United States, including the petitioners.

4. The respondents' assertion that:

> ". . . there was no disputed question (in the courts below) as to the construction or effect of any constitutional provision or federal statute, and that the sole issue was whether the respondents, not questioning or denying petitioners' legal rights . . ."

impinged upon the petitioners' rights is not supported by the Record. On the contrary, the respondents have, in the District Court below, challenged, in effect, the scope and meaning of the Fourth Amendment, asserting in their motion to dismiss [R. 146] that the searches and seizures abridged "no rights under the Constitution of the United States."

Thus, the major issue, as joined in by the respondents, in the instant case is whether, as properly (and, we believe, broadly) construed the Fourth Amendment prescribes the conduct by government officers complained of—an issue inevitably requiring a construction of the meaning and scope of the Fourth Amendment, and, particularly, the phrase in the Amendment, "unreasonable."

Conclusion.

We dissent from the assertion of the respondents that the petitioners may secure adequate vindication of their rights by way of their motions to suppress the evidence, claimed by them to have been illegally seized, in the criminal prosecution against them, now on appeal.

Surely, the citizen should not be required to wait until he is prosecuted for crime, before he may have recourse in the federal courts to protest an unreasonable search and seizure. Were that the law, the "lawless" law-enforcement officer would be encouraged to evade criminal prosecution, in the more flagrant violations of the guarantees against unreasonable searches and seizures, in order to

avoid judicial reprimand. And thus the guilty citizen would go unpunished, along with the lawless official.

Nor does the existence of federal criminal penalties for unlawful searches and seizures (18 U. S. Code, Sec. 53a) afford adequate redress. The instant case is evidence in point. Instead of prosecuting the respondents, Government counsel, low and high have entered the lists supporting the defense of the respondents, rather than protecting the rights of the petitioners. Thus the United States Attorney, in the courts below at government's expense, has appeared in behalf of the respondents; the Solicitor General of the United States similarly appears in their behalf in this Court. If successful, the effect of their aid will be that not only will the respondents not have been prosecuted for a violation of the federal statute imposing penal sanctions for unlawful searches and seizures, but they will be immunized from civil liability for the unlawful arrest and imprisonment of the petitioners, by virtue of the lapse of the California Statute of Limitations.[5]

That the only substantial deterrent to the "lawless enforcement of the law" and to public officers so disposed is the prospect of civil suits for damages for lawless official conduct, seems to be the lesson of experience.

Only by keeping the doors of the Federal District Courts wide open to citizen suitors seeking a vindication of their

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[5]California Code of Civil Procedure, Sec. 340. Cf. our discussion in our Petition, p. 23, footnote 13.

constitutional rights against federal officers who have violated them—whether the suit is for injuction or for damages—can we square our domestic judicial policy with our international judicial policy towards international lawlessness.[6]

Respectfully submitted.

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[6]In opposing a weak international policy on international official lawlessness, Justice Robert H. Jackson, as Chief of Counsel for the United States in the prosecution of Axis War Criminals explained that such a policy should in any event not be "inconsistent with the position we take toward our own officials, who are frequently brought to court at the suit of citizens who allege their rights to have been invaded."